

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

**I.T.A. No. 6084/Mum/2025 (A.Y: 2015-16)
I.T.A. No. 6085/Mum/2025 (A.Y: 2016-17)
I.T.A. No. 6086/Mum/2025 (A.Y: 2017-18)
I.T.A. No. 6087/Mum/2025 (A.Y: 2018-19)
I.T.A. No. 6088/Mum/2025 (A.Y: 2019-20)
I.T.A. No. 6089/Mum/2025 (A.Y: 2020-21)
I.T.A. No. 6090/Mum/2025 (A.Y: 2021-22)**

Shamji Kanji Zaru A-76, Ahir vas, Sahara Gram, Village bhimasar Taluka, Anjar Dist. Kutch Gujarat - 370240	Vs	DCIT, CC – (4) Aayakar Bhavan MK Road, Mumbai – 400020.
(Appellant)		(Respondent)

Assessee by	Shri Mehul Rampura
Revenue by	Shri Vivek Perampurna, CIT DR

Date of Hearing	13.01.2026
Date of Pronouncement	28.01.2026

ORDER

PER BENCH:

The present appeals have been filed by the assessee challenging the different impugned orders dt. 21.07.2025 passed under section 250 of the Income Tax Act, 1961 (‘the Act’), by the National Faceless Appeal Centre (NFAC) / CIT(A) for the assessment years 2015-16 to 2021-21.

Since all the issues involved in all these appeals are common and identical, therefore, they have been clubbed, heard together and consolidated order is being passed for

the sake of convenience and brevity. We shall take **ITA No. 6089/Mum/2025, A.Y 2020-21** as lead case and facts narrated therein.

ITA No. 6089/Mum/2025, A.Y 2020-21

2. The assessee has raised the following grounds of appeal:

1. The grounds of appeal mentioned hereunder are without prejudice to one another.

2 Ld. Commissioner of Income-tax (Appeals)-54, Mumbai (hereinafter referred to as the "CIT(A)") erred on facts as also in law in confirming penalty of Rs. 20,000/- levied u/s. 271(1)(b) of the Act. The penalty levied u/s. 271(1)(b) of the Act is totally unjustified on facts as also in law may kindly be deleted.

3 Your Honour's appellant craves leave to add, to amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal.

3. The only effective ground raised by the assessee in the present appeal is challenging the order of Ld. CIT(A) in confirming the penalty of Rs. 20,00,000/- u/s 272A(1)(d) of the Act.

4. We have heard the counsels for both the parties, perused the material placed on record, judgments cited before us and also the orders passed by the revenue authorities. From the records, we noticed that the assessee is an individual, engaged in the telecom business under the name and style of proprietorship concern namely "Raj Telecom" and is not maintaining books of accounts and therefore has declared profit on presumptive basis

u/s. 44AD of the Act. Apart from that the assessee had derived income from saving bank interest income and commission income.

5. The assessment in the present case was completed u/s 153C r.w.s 144 of the Act on 26.03.2024 thereby accepting the returned income as such. However, the AO was of the view that since the assessee had failed to comply with the notice issued u/s 143(2) / 142(1) of the Act, therefore wide order dated 26.06.2024 levied penalty of Rs. 20,000/-. In this regard Ld. AR submitted that the reasons for non compliance was that the e-mail address of the assessee's relative was registered on the ITD portal, and therefore, digital correspondence was sent to the relative's email. As the relative did not communicate the details of the notices to the assessee, the same remained unanswered. The assessee became aware of the matter only upon receipt of the assessment order. Upon such receipt, the assessee immediately contacted his authorized representative and filed an appeal against the assessment order. It is further submitted that only two notices were issued, both dated 14.03.2024 i.e., notice under section 143(2) and notice under section 142(1), requiring the assessee to respond within five days. Thus, due to the inadvertent mistake on the part of the relative, the notices remained un-compiled with.

6. It was further submitted that however the AO was of the view that the contention of the assessee was not acceptable on the ground that ultimate assessment order was received at the said e-mail address. However in this regard it was specifically submitted that the assessee had randomly logged into the income tax portal and discovered that the assessment order had been passed in her case, following which the appeal was filed. Hence, the presumption that the assessee had received the assessment order but chose not to respond to the notices under sections 143(2) and 142(1) is purely speculative. However, the AO, without duly considering this aspect, summarily rejected the assessee's contention without providing cogent reasons.

7. We further noticed that AO had issued notice u/s 153C of the Act for all the six assessment years i.e 2015-16 to 2021-22 though there were no incriminating material in these years were found and the AO has specifically mentioned in its order that assessment was finalized u/s 144 of the Act was finalized accepting the returned income and no tax was demanded for assessment years under consideration, in this regard reliance has also been placed upon the decision of Coordinate Bench of ITAT Jaipur Bench in the case of **Suresh Kumar Agarwal v JDIT in ITA Nos 1073 & 1074/JP/2018** wherein it was held as under:

9. We further arrive at a conclusion that ignorance of law is certainly no excuse for a default committed but, at the same time, there is no presumption in law that everybody knows the law. The application of this rule would differ from case to case and person to person. In a given case, there may be a person who is quite illiterate, living in remote village, rarely coming in touch with law enforcing machinery and not required to discharge any statutory obligations under a particular law. Ignorance of law may be a good excuse in his case. As submitted by the Ld AR for assessee that there is no willful failure to comply the with summons u/s 131(A) of the IT Act dated 04.10.2013.

10. Therefore the order on the CIT (A) is accordingly set aside and thus penalty u/s 272A(1) (c) levied by the AO is not in accordance with law therefore same is cancelled. In the result appeal of assessee is allowed.

8. Apart from this we also noticed that AO had levied penalty for A.Ys 2016-17 to 2021-22 Therefore it is relevant to mention the status of the income that had been returned and assessed by AO and the same is summarised as under:

AY	Returned income	Assessed Income	Addition
2015-16	2,66,650	2,66,650	Nil
2016-17	2,70,940	2,70,940	Nil
2017-18	2,99,370	2,99,370	Nil
2018-19	3,21,440	3,21,440	Nil
2019-20	3,10,690	3,10,690	Nil
2020-21	3,10,690	3,10,690	Nil

9. From the above, we noticed that in assessment proceedings, the AO had accepted the income returned for all six years under consideration i.e A.Y 2015-16 to AY 2020-21. The AO has levied penalty of Rs. 20,000/- for

each year. Although there is no demand on account of tax and interest for AY 2015-16 to 2020-21, however penalty for non-compliance of notices had been levied. The AO in its assessment order under section 153C for relevant previous year have stated that "*proceedings was required to be completed Ex-parte based on the material available on record under 'Best Judgement Assessment.'*" Hence, no addition was made which established that there were no incriminating documents pertaining to the year under consideration. This establishes the fact that it would not have made any difference on finalization of assessment whether the assessee had filed the reply or not, as no incriminating material had been found for the year under consideration. However, the assessee was penalized for venial breach of notice, which does not have much relevance in finalization of assessment. Which in our view is against the principles of natural justice. In this regard consistent view had been taken by various courts that penalty should not be levied for venial breach. In this connection reliance is being placed on the following decisions:

(i) The Hon'ble Supreme Court in the case of ***Hindustan Steel Ltd. vs. State of Orissa (1972) 83 ITR 26 (SC)*** wherein it has been held that:

"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or guilty of conduct.

Penalty will also not be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty when there is a technical or venial breach of the provision of the Act or where the breach flows from a bona fide belief that the offender is not liable to Act in the manner prescribed by the statute."

(ii) Hon'ble ITAT Delhi Bench "G" in the case of **LKG Builders Pvt Ltd v DCIT, ITA Nos 4429 & 4434/DEL/2015** have held that

"12. Apart from that, one important fact brought on record is that, the demand in the quantum proceedings has been reduced to "nil", after giving effect to the first appellate order and there has been no substantive non-compliance either during the course of the assessment proceedings or during the appellate proceedings. In such circumstances such an alleged breach or non-compliance is mere technical and venial in nature and therefore, penalty should not be levied for such venial breach. Accordingly the levy of penalty of Rs 20,000/- u/s 271(1)(b) for all the assessment years is unsustainable for the reasons given above and is directed to be deleted. Thus, grounds raised by the assessee are allowed."

(iii) **Ltd v DCIT. ITA Nos 4413 to 4415/DEL/2015 Hon'ble ITAT Delhi Bench "G" in the case of MDLR Builders Pvt.**

(iv) **Hon'ble ITAT Delhi Bench in the case of M/s. King Buildcon (P) Ltd. (A.Yrs. 2005-06 to 2008-09- order dated 13.11.2017) ITA Nos. 4188 to 4213, 4693 to 4696, 4698, 4225 & 4226/Del./2015 9**

(v) **Hon'ble ITAT Delhi Bench in the case of M/s. Kairav Non-woven (P) Ltd. (A.Yrs. 2006-07 to 2008-09-order dated 31.08.2017)**

(vi) Hon'ble ITAT Delhi Bench in the case of Gobind Kumar Goyal (A.Yrs. 2002-03 to 2008-09 - order dated 30.08.2017)

(vii) Hon'ble ITAT, Delhi Bench 'C', New Delhi in the case of M/S. Bhudeva Commodities Ltd vs Dcit, New Delhi ITA Nos.4188 to 4191/Del./2015

(viii) In view of the above, it is requested to delete the penalty levied for venial breach.

10. Therefore considering the totality of the facts and circumstances as discussed by us above and also taking into consideration the catena of Judgements including that of Hon'ble Supreme Court and various High Courts and also the Coordinate Benches of ITAT where under the *identical circumstances* involved the *same* decisions have been made in favour of assessee. Therefore, respectfully following the principles of judicial discipline and judicial consistency we also direct the AO to delete the penalty levied u/s 272A(1)(d) of the Act and order accordingly. Therefore the grounds raised by the assessee stands allowed.

I.T.A. No. 6085/Mum/2025 (A.Y: 2016-17)

I.T.A. No. 6086/Mum/2025 (A.Y: 2017-18)

I.T.A. No. 6087/Mum/2025 (A.Y: 2018-19)

I.T.A. No. 6088/Mum/2025 (A.Y: 2019-20)

I.T.A. No. 6089/Mum/2025 (A.Y: 2020-21)

I.T.A. No. 6090/Mum/2025 (A.Y: 2021-22)

11. As the facts and circumstances in these appeals are identical to ITA No 6089/Mum/2025 for the A.Y 2020-21

(except variance in days of delay) and the decision rendered in above paragraph would apply ***mutatis mutandis*** for these appeal also. Accordingly, the grounds of appeal of the present appeal also stands allowed.

12. In the result, all the appeals filed by the assessee are stands allowed.

Order pronounced in the open court on 28/01/2026

Sd/-
(ARUN KHODPIA)
(ACCOUNTANT MEMBER)

Sd/-
(SANDEEP GOSAIN)
(JUDICIAL MEMBER)

Mumbai:
Dated: 28/01/2026

KRK, Sr. PS.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)
ITAT, Mumbai